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February 3, 2004

VIA ELECTRONIC SUBMISSION

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12th Street, SW – Lobby Level  
Washington, D.C. 20036

Re: ***Notice of Ex Parte -- Petition for Declaratory Ruling that AT&T's Phone-to-Phone IP Telephony Services Are Exempt from Access Charges, WC Docket No. 02-361***

Dear Ms. Dortch:

On behalf of SBC Communications, Inc. (SBC), James C. Smith, Jack Zinman, and I met yesterday with Commissioner Kevin Martin and his legal advisor, Daniel Gonzalez. During the course of the meeting, we reiterated the points SBC made in its earlier filings and ex parte submissions in this docket. In particular, we asserted that the plain language of the Commission's access charge rules requires AT&T to pay access charges on its "IP-in-the-middle" long distance telephone service. We also explained that, while SBC supports the Commission's stated intention to open a rulemaking proceeding on Voice over Internet Protocol (VoIP), the Commission should not delay ruling on AT&T's petition pending the initiation or completion of that proceeding.

We further responded to the question of whether the AT&T petition should be decided contemporaneously with a decision on whether a Vonage-type service should be subject to access charges. We noted that:

- While the AT&T access charge issue has been pending for fifteen months, Vonage's petition does not even raise access charge issues; indeed Vonage expressly noted that it was not asking the Commission to address such issues. Nor did AT&T's petition raise these issues. Indeed, AT&T has not even argued, much less shown, that its petition should be decided contemporaneously with Vonage's petition.

- A decision on the application of access charges in a Vonage-type situation is nowhere near as urgent as a decision on the AT&T petition. Without a decision on the AT&T petition, AT&T can literally dismantle the access

charge regime in virtually no time at all, simply by migrating its long-distance traffic onto its IP backbone while the Commission stands idly by.

Sprint recently demonstrated just how quick and easy this could be by migrating, according to Southwestern Bell sampling data, more than 40% of its long-distance traffic to its IP backbone in just one month. Vonage and other VoIP providers, in contrast, are actually selling a service to end users, customer by customer, and thus are in no position to have any dramatic near-term effect on the access charge regime.

- Unlike a decision on AT&T's petition, which requires only a straightforward application of the law, a decision on a Vonage-type service would have to address not only *whether* terminating access charges are due, but also whether the Commission's current rules for determining the jurisdiction of such traffic should apply, an issue the Commission may well want to address in an NPRM.

Pursuant to 1.1206 of the Commission's Rules, this letter is being filed electronically with the Commission.

Sincerely,

**/s/ Gary L. Phillips**

cc: Commissioner Kevin Martin  
Daniel Gonzalez  
Matt Brill  
Christopher Libertelli  
Jessica Rosenworcel  
Lisa Zaina